

**Absent Parent Protocol:**

**Finding and Notifying**

**Non-custodial Parents**

**in**

**Child Protective Cases**

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# Absent Parent Protocol: Finding and Notifying Non-custodial Parents in Child Abuse and Neglect Cases

## Introduction

This protocol has been developed as a resource for persons who have responsibility to find and, if appropriate, involve absent parents in child protection proceedings. The overall goal of this resource is to insure that the issue is addressed in a timely manner, and as necessary, at each stage of a child protection case.

The Absent Parent Protocol has been developed because, in jurisdictions throughout Michigan, a variety of issues have arisen when absent parents are not located and involved as early as possible in the process.

- If efforts to locate an absent parent do not begin early on, the issue can be lost, and in far too many cases, negative consequences have resulted.
- Plans for permanency have been disrupted when the due process interests of an absent parent were not addressed early on, and that parent entered the picture long after a case direction has been established.
- Court proceedings have become unnecessarily complex when differing rules of evidence had to be used for the parents of the same child in the same case.
- In some cases, a viable and appropriate alternative placement with the absent parent or their family was not considered as an option because an absent parent was not found.

Concerns such as these were raised in several forums where barriers to permanency were investigated. Absent parent issues were raised by the Children's Task Force of the State Bar of Michigan, the Court Reforms Efforts of the Kent County Families for Kids Initiative, and in annual reports of the Foster Care Review Board. In addition, the issue was addressed in the assessment phase of the State Court Administrative Office's Court Improvement Project. After a prioritization was done of the more than 60 recommendations, lack of due process for absent parents emerged as one of the top three barriers to implementing permanent plans for children. In response, the SCAO began the process for the development of a protocol.

**It should be noted at the outset that, while the name of this document includes the word protocol, it is not legislatively established and does not carry the weight of law. The Absent Parent Protocol has been established as a result of recommendations from an independent assessment of child protective court proceedings. It has been developed because of a broad based consensus that not handling absent parent matters appropriately has been a barrier to a timely permanent placement for too many children. This protocol should therefore be treated as an effort to provide jurisdictions with recommendations for best practice. While it does discuss a variety of activities that are required because they are in legislation or in a court rule, many of the activities listed for locating absent parents are suggested strategies and should be used as appropriate for the circumstances of a particular case.**

Four inter-related themes emerged which guided the development of this protocol.

1. **The courts must take leadership to insure that efforts to find and involve absent parents are given appropriate attention beginning with the earliest stages of a child protection case.** The role of the court is essential to a successfully implemented local protocol. By consistently raising the issue, a level of expectation can be established. In addition, activities to locate absent parents can be locally institutionalized by integrating the issue into local procedures.
2. **Recommendations Must Be Sensitive to Current Workload and Responsibilities:** There is already a tremendous amount of work involved to conscientiously respond to all current responsibilities in child protective proceedings. While this protocol recommends additional work in some situations, the intent is to provide approaches that are effective yet not overly time consuming. It is also noted that very little in this protocol is new, but rather this protocol puts in one place the best practice approaches and resources.
3. **Protocol must take full advantage of new technologies:** New technologies have greatly enhanced access to databases and other sources of information that can facilitate the search for absent parents. In developing this protocol, time was taken to research these tools and offer suggestions for accessing them.
4. **Protocol will only be successfully implemented with "buy in" of local leadership:** The intent of this protocol is to provide useful, efficient tools for finding and involving absent parents. Successful implementation, however, will depend upon commitment by all persons involved to change local practice as appropriate and expend the necessary extra effort to increase the number of absent parents located. Effective implementation will require new relationships with systems (such as the Office of Child Support Enforcement) that don't currently have a role in involving absent parents in child protection proceedings. The extent to which this is realized is dependent upon whether local court, FIA, and agency leadership agree that the disposition of child

protection cases will be improved, and that there will be fewer instances where permanency plans for children in these circumstances are disrupted.

## **Section I: Early Attention to the Absent Parent Issue**

### ***The Court***

A successful protocol for locating and involving absent parents is dependent upon a local system that incorporates attention to the matter at the earliest possible point and into every subsequent aspect of the child protection proceeding process. While the activities involved in locating absent parents are substantially the responsibility of others, the system is given meaning by a court that embraces the importance of this work and insures, through the review role, that timely and appropriate activity takes place.

The leadership of the court can significantly influence the level of attention and activity directed at locating absent parents. The presiding court officer plays a critical role in any case where either an absent parent has not yet been located, or where the absent parent is not identified and included on the petition. By assuring that attention is given to the issue as soon in the process as is reasonable, the court conveys a message that locating absent parents should be a priority. The court can be a catalyst to ongoing efforts by continuing to raise the issue, as appropriate, at subsequent hearings.

The court has two sets of responsibilities. The first is to insure that appropriate notice is provided and that it is served in a manner appropriate to the situation. The second is to raise the issue of an absent parent as necessary, beginning with the preliminary hearing, and as appropriate, at each subsequent hearing. This includes assuring that the petition adequately covers the situation regarding an absent parent and that the petition is amended as new information emerges.

### ***Child Protective Services and Foster Care***

It is important for case handling staff to begin efforts to find and involve an absent parent at the earliest stages of child protective proceedings. Early efforts can insure that the issue is appropriately addressed in the petition and can facilitate cooperative and coordinated efforts among staff from protective services, FIA foster care, and private agency foster care.

During the early stages of a protective proceeding both foster care and protective services can be involved. Protective services staff is responsible for the legal aspects of the case and stays involved through the adjudication phase. In many jurisdictions foster care staff will begin to take on the social work role either at the preliminary hearing or shortly thereafter. As a result, during the time between the preliminary hearing and the adjudication of the case, both foster care and protective services staff could be engaged in activities to find an absent parent.

The amount of information that either foster care or protective services staff have regarding absent parents will vary, depending upon the case. In many counties, protective services has placed a high value on providing services and interventions for low and moderate risk families. In these cases, protective services staff is more likely to have information regarding an absent parent. In more egregious cases where a petition is immediately filed, protective services involvement is limited to investigation and substantiation.

Because of the different actors potentially involved in efforts to locate absent parents, it is important that local systems and relationships be established to insure that information is shared in a timely manner. This includes good communication between protective services and foster care staff. If not currently in place, protocols need to be established between FIA and private agencies to insure that foster care staffs have access to the variety of resources available for finding absent parents and for establishing paternity.

## **Petition, Notice, & Manner of Service:**

In addition to diligent efforts to locate an absent parent, effective early attention requires that the petition, notice and manner of service be handled appropriately. These legal aspects of the case provide the absent parent with information about the child protective proceeding. In addition, the petition and notice can, if appropriate, bring the absent parent into the proceeding as a respondent. The responsibilities for the petition, notice and service are shared between the court and the petitioner.

### **Petition**

***1. Regardless of whether the identity or whereabouts of the absent parent has been determined barring mitigating circumstances, the petitioner should include the absent parent as a respondent in the original or an amended petition.***

#### **INCLUDING THE ABSENT PARENT AS A RESPONDENT IN THE ORIGINAL OR AMENDED PETITION**

In most cases, if the absent parent is not involved in the child's life, has not sought custody of the child, and there is no indication that the absent parent intends to provide for the proper care and custody of the child, then the Juvenile Code provides a basis for including that absent parent as a respondent in a proceeding involving the other parent (see MCL 712A.11(6) and 712A.19b (3) (a) and (g)). The allegations against the absent parent do not have to be the same as those that brought the parent with custody to the attention of the court. ***Failure to insure that a parent becomes a respondent when it is appropriate to do so is one of the often-mentioned complications that delays permanency plans for children.***

Including the absent parent as a respondent in the original petition, if appropriate, or amending the petition to include the absent parent when allegations later surface, can serve to address issues that are barriers to permanency for the children involved.

**Evidentiary Issues:** If an absent parent has never been a respondent until such time that termination is sought against the other parent, then relevant and material evidence assembled during the course of the protective proceeding may *not* be considered to establish a statutory basis for termination of the absent parent's rights. This is because legally admissible evidence must be used to establish the factual basis of parental unfitness sufficient to warrant termination of parental rights if the allegations against the absent parent are new or differ from those that allowed the court to take jurisdiction of the child MCR 5.974(E). While the absent parent is rightfully entitled to such protection, the stricter evidentiary standards could possibly preclude the admission of information concerning the absent parent's fitness obtained during the course of the protective proceeding.

**Early Involvement in the Case Service Plan:** When absent parents are respondents, it is far more likely that those with any interest in a parental relationship with the child will respond to legal notice of the proceedings and become involved in the Case Service Plan early on. In too many cases, absent parents have emerged only after it became apparent that the parent with custody would likely lose parental rights.

***2. Child Protective Services, Foster Care, and private agencies must cooperate and share information regarding allegations against an absent parent to be included in an amended petition.***

***3. If appropriate, identify the absent parent as a putative father in the original or an amended petition.***

A petition that properly addresses the circumstances surrounding an absent parent can be an effective way to avoid difficulties as the case progresses. If determinations regarding the fitness of absent parent are to be made in the course of the child protective proceeding, then the petition must include allegations regarding that parent. Therefore, if possible (and appropriate) any allegations regarding the absent parent should be made in the original petition. The petition should address the absent parent both in circumstances where the identity is known as well as in cases where parentage has not been determined.

#### ***Identity of Absent Parent is Known***

- In cases where the identity of the absent parent is known but efforts to locate have been unsuccessful then the following should be addressed.
  - Any allegations known regarding the parental unfitness of the absent parent should be included in the Original Petition.
    - If a diligent search is made, and an absent parent is not found, and there is no indication that the absent parent has sought custody, or intends to provide for proper care and custody of the child, then barring mitigating circumstances, the absent parent should be a respondent in the original petition. (MCL 712A.19b (3) (a) and (g).
    - Allegations could also include any statements made by the mother regarding prior abuse of the children or domestic violence, which may have affected the children.

### ***Identity of Absent Parent is Unknown***

- If the absent parent has not been identified, the petition should indicate that the “identity of the absent parent has not been determined.”
- In addition if a diligent search is made and the absent parent cannot be identified and there is no indication that the absent parent has sought custody, or intends to provide for proper care and custody of the child, then barring mitigating circumstances, the absent parent, even if not identified, can be a respondent in the original petition. (MCL 712A.19b (3) (a) and (g).

### ***Identity is Thought to be Known, but Parentage is Being Denied or is in Question***

**Petition:** In cases where parentage has not yet been determined, the petition should name the putative father as provided for on the Petition (JC 04).

- If the court has reason to believe that an identified person is the natural father, then notice of a protective proceeding must be provided to that person. Efforts at notice should be undertaken even if whereabouts of the absent putative father is not known.
- SCAO Form JC 53 can be used to provide notice to a putative father. This form is designed to inform the absent parent of the following.
  - That a petition has been filed with the court
  - The time and place at which the natural father is to appear to express his interest, if any, in the child
  - That failure to appear and express interest could result in:
    - a denial of interest in the child;
    - a waiver of notice for all subsequent hearings;
    - a waiver of the right to appointment of an attorney and;
    - Termination of any parental rights.

## **Notice**

***1. If a putative father has been identified, provide notice of the proceedings to the putative father.***

***2. Provide proper notice of the proceedings to a non-custodial legal parent.***

### ***Putative Father***

- If the court has reason to believe that an identified person is the natural father, then notice of a protective proceeding must be provided to that person. Efforts at notice should be undertaken even if whereabouts of the absent putative father is not known.
- SCAO Form JC 53 can be used to provide notice to a putative father. This form is designed to inform the absent parent of the following.
  - That a petition has been filed with the court
  - The time and place at which the natural father is to appear to express his interest, if any, in the child
  - That failure to appear and express interest

### **Putative Fathers – Putative Father Hearings**

A putative father is defined in two different ways

- An identified man who is believed to be the biological father of a child born to a woman who was unmarried from conception to birth of the child
- The father of a child who a court has determined is not the issue of a marriage

The court is given authority to conduct a Putative Father Hearing. MCR 5.921(D)(2) provides guidance for conducting a hearing commonly referred to as a ***Putative Father Hearing***. A Putative Father hearing may be a separate proceeding. However, in many instances, the putative father hearing is consolidated with the next proceeding in the process – usually either the Pretrial or the Adjudication

The purpose of a putative father hearing, in the context of a child protective proceeding has two inter-related purposes.

- To establish that the man in question is in fact the father of the child(ren) involved in the proceeding
- To enable protective services or foster care to determine whether;
  - The putative father should be a respondent to the proceedings or,
  - The putative father should be involved in the case services plan or is a viable placement for the child

“When persons whose whereabouts are unknown fail to appear in response to notice by publication or otherwise, the court need not give further notice by publication of subsequent hearings except a hearing on the termination of parental rights.” MCR 5.921 (E)

“The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to legal counsel if:

- a) He fails to appear after proper notice, or
- b) He appears, but fails to establish paternity within the time set by the court. “MCR 5.921(D)(3)

could result in:

- A denial of interest in the child;
- A waiver of notice for all subsequent hearings;
- A waiver of the right to appointment of an attorney and;
- Termination of any parental rights.

### ***Non-Custodial Legal Parent***

- Notice for a non-custodial legal parent who is not a respondent is provided by or through service of the Notice of Hearing (JC 45), and a copy of the petition. If personal service cannot be achieved, service may be made by mail or publication.
- If a non-custodial legal parent fails to appear and there is no indication that the absent parent has sought custody, or intends to provide for proper care and custody of the child, then barring mitigating circumstances, the absent parent should be a respondent in the original petition. (MCL 712A.19b (3) (a) and (g).
  - Allegations could also include any statements made by the mother regarding prior abuse of the children or domestic violence, which may have affected the children.
- While this protocol places a strong emphasis on including an absent parent as a respondent, in some cases, either foster care or protective services staff will discover information about an absent parent that needs to be added as allegations to an original petition. When such amendments are made it is important that the absent parent be served with an amended petition and summons. If personal service cannot be achieved, service may be made by mail or publication. The absent parent is then a respondent to the proceedings and under the jurisdiction of the court.

#### **Elements of Notice Respondent versus Non-Respondent Parents**

The kind of notice provided to an absent parent can vary depending upon whether that parent is a respondent to the child protection proceedings. It is distinguished as follows.

##### **NON-RESPONDENT ABSENT PARENT**

- Petition JC 04
  - Notice of Hearing JC 45
- Note:** The court may issue a summons requiring the appearance of anyone who is found to be necessary in the opinion of the judge. Therefore a non-respondent absent parent may receive a summons to appear as well.

##### **RESPONDENT ABSENT PARENT**

- Summons: Order to Appear (Child Protective Proceedings) JC 21
- Petition JC 04
- Notice of Hearing JC 45



## Manner of Service:

- 1. Provide personal service of a notice of hearing or summons to a putative father or non-custodial legal parent.**
- 2. If personal service is impracticable or cannot be achieved, follow proper procedure for achieving alternate service.**
- 3. If the identity and whereabouts of an absent parent are unknown, conduct a thorough inquiry, including contacting the Office of Child Support Enforcement, to identify and locate the absent parent.**
- 4. If the identity of the absent parent is known but his or her whereabouts has not been determined, conduct a diligent search for the absent parent's whereabouts.**
- 5. Utilize the appropriate method of alternate service.**

- It is important for the court to make every effort to insure that the manner of service results in actual notification of the absent parent. Personal service is the preferred means to notify both a putative father and an absent legal parent of an upcoming proceeding.

***The kind of notice provided to an absent parent can vary depending upon whether that parent is a respondent to the child protection proceedings. It is distinguished as follows.***

### NON-RESPONDENT ABSENT PARENT

- Petition JC 04
  - Notice of Hearing JC 45
- Note:** The court may issue a summons requiring the appearance of anyone whose presence is found by the judge to be necessary. Therefore, in some cases, a non-respondent parent may receive a summons as well.

### RESPONDENT ABSENT PARENT

- Summons: Order to Appear (Child Protective Proceedings) JC 21
- Petition JC 04
- Notice of Hearing JC 45

- **There are two different situations regarding notice.**

- **Whereabouts Known But Service is Impracticable**
  - If personal service is impracticable or cannot be achieved, the court rule specifies "some other manner of service which the court finds to be reasonably calculated to provide notice," including registered or certified mail addressed to the last known address.
- **Whereabouts Unknown**
  - If whereabouts is unknown, the court may use substituted service, including service by publication

- **Motions and Orders for Alternate Service**
  - In situations where personal service is not possible, it is recommended that a Motion for Alternate Service is filed and, as appropriate an Order for Alternative Service is entered. (Forms JC 46 & 47)

- **Reasonable Efforts To Locate - Prior to a Motion for Alternate Service**
  - Before the Court approves a motion for Alternate Service, care should be taken to insure that reasonable efforts have been made to locate and provide personal notice to an absent parent. It is recommended that the *Affidavit of Diligent Search* (which is included with these materials) be used as part of a local protocol to assure that efforts to locate absent parents are made. The form provides the caseworker the opportunity to affirmatively state that reasonable efforts have been made to locate an absent parent. In addition, it establishes a request for a search by the Office of Child Support Enforcement as a "reasonable efforts" standard when other activities prove unsuccessful.
  - The Affidavit of Diligent Search is incorporated into a local protocol by requiring that it be an attachment to any Motion for Alternate Service. In all cases the Affidavit becomes part of the legal file. The reasonable efforts standards in the *Affidavit of Diligent Search* follow.
    - Has the parent involved in the protective proceeding been asked as to the identity and whereabouts of the absent parent?
    - Have friends and relatives been contacted?
    - Was the telephone directory checked?
    - Was the city directory checked? (if one exists)
    - If none of the above were successful, has a request for a search by the Office of Child Support Enforcement been made?

- The Motion for Alternate Service is commonly used in two different sets of circumstances
  - Reasonable efforts have been undertaken, but the whereabouts of the absent parent is unknown or has not yet been determined.
  - There is an assumption that the whereabouts is known, but for a variety of reasons, personal service has not been possible.
- When a motion for alternate service is filed, the court should ensure that a copy is provided to all parties to the proceedings.

#### **Rules of Evidence and Termination of Absent Parent's Rights**

- When the absent parent is first made a respondent at a termination proceeding, then only legally admissible evidence can be used to establish the statutory basis for termination of the absent parent's rights.
- In addition to the more stringent evidentiary standards, it can be difficult to establish proofs for termination because issues relative to the fitness of the absent parent have not been legally considered. As a result petitioners are often left with grounds for termination that have the effect of delaying permanency. For example MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to jurisdiction) is often used in these situations. If this particular section is relied upon to terminate the parental rights of an absent parent who has never been a respondent, the following must be provided that absent parent.
  - An adjudicatory hearing must be held
  - A dispositional order must be entered
  - The absent parent must be given the opportunity of at least 182 days in which to rectify the adverse conditions.

## Section II: Court Review

The court's review role, when applied to act Preliminary Hearing and Pre-Trial are of prior stages provide the court an opportunity to call attention to the matter. Absent parents should remove themselves from the picture.

### Court Proceedings - Raising the

**1. *The court should question the current whereabouts of the absent parent.***

**2. *If a putative father has been identified, the court should conduct a putative father hearing.***

**3. *The court should request that counsel include allegations against an absent parent.***

**4. *At each proceeding, the court should provide notice of the proceedings on an absent parent.***

- An essential role for the presiding court is to ensure that a putative father is identified in a proceeding so long as the identity or location of the father is unknown to either protective services or foster care and the court is aware of an absent parent. It is expected that, in a proceeding:
  - Has the parent involved in the proceeding?
  - Have friends and relatives been contacted?
  - Was the telephone directory checked?
  - Has the following information been obtained?
    - Name
    - Last Known Address
    - Phone Numbers
  - Was the city directory checked?
  - If none of the above were successful, has the Office of Child Support Enforcement been contacted?
- Has a determination been made on the period between conception and birth?
  - Is a father listed on the birth certificate?
  - Are the parents asked to affirm that they are the father?
  - Is an affidavit of parentage filed?
  - Is an Order of Filiation filed with the court?
- If paternity has been established, has the father been located?
- If parentage is in question, are steps being taken to establish paternity?
- Based on the information before the court, has the court determined:
  - Whether service has taken place?
  - Whether a preponderance of the evidence has been established?
  - Whether there is probable cause to believe that the father is involved in the child's life?
  - Whether after, diligent inquiry, the father has been located?

**Note:** MCR 5.921(D)(2) provides that a Putative Father hearing may be a separate proceeding or consolidated with the next proceeding.

- If the absent/non-custodial parent has been identified, even if not located, have attempts been made to determine the following. Determine if any of the following information should be included in the Original Petition?
  - Does the Absent Parent have a criminal history?
  - Does the Absent Parent have a Protective Services history?
  - Has the Absent Parent ever contributed to the financial support of the child(ren)
  - Has the Absent Parent ever had custody of the child(ren)?
  - Have any of the Absent Parent's relatives ever been involved in caring for the child(ren)?
  - To what extent has the Absent Parent maintained contact with the child(ren) or otherwise shown interest?
  - Are there other factors that would indicate the Absent Parent's willingness and/or ability to care for the children?

## ***Beyond the Preliminary and Adjudicatory Phases - Ongoing Attention***

This protocol is designed to promote early, intensive and coordinated effort for finding and, if appropriate, involving an absent parent in a child protective proceeding. In most cases these efforts will resolve the issue early in the process. However, in some situations, any of a variety of concerns may linger beyond the adjudicatory phase of a child protection proceeding. In these cases, the judge or referee should raise the issue of an absent parent at each court proceeding after adjudication so long as questions remain. Depending upon the circumstances, any of the following may be appropriate review questions.

- Identity and whereabouts is not known,
  - What continued efforts have been undertaken to identify and locate the absent parent?
- Identity is known but efforts to locate have not been successful,
  - What continued efforts have been undertaken to locate the absent parent?
- Identity is thought to be known, but parentage is being denied or is in question.
  - Have appropriate steps been taken to determine parentage?
  - If parentage has been determined since the last court hearing, what has been done to engage the absent parent involved in the child's life or, to establish that the parent has no interest?
- Identity and whereabouts is known,
  - What has been done to engage the absent parent or to establish that the parent has no interest?

### **New Information - Amended Petitions**

Either foster care or protective services staff may discover information about an absent parent that could be an allegation and included as an amendment to an original petition. The court could request that the agency legal counsel review the matter, and if there are no plans to amend the petition, the court could ask the agency staff to make a record as to why an amendment isn't being done.

## ***Termination of Parental Rights of Absent Parents Who Have Never Been a Respondent***

- At least one statutory ground for termination of the absent parent's parental rights must be properly alleged and set forth in the amended or supplemental petition (e.g., abandonment, failure to provide proper care or custody).
- A noncustodial parent must be notified of the petition and the time of hearing. MCL 712A.12, *In re Brown*, 149 Mich App 529 (1986). A summons, with a copy of the amended or supplemental petition attached, should be issued and served on the absent parent according to the rules governing service in child protective proceedings. See MCL 712A.20, *In re Atkins*, 237 Mich App 250 (1999).
- The rules governing service in child protective proceedings include provisions for substituted service, including service by certified mail or publication, when personal service is impracticable or the parent's whereabouts are unknown. Before resorting to notice by publication, however, the court must determine whether reasonable efforts were made to locate the absent parent.

## Section III: Protective Services and Foster Care

### ***Protective Services - Early Attention to the Absent Parent Issue***

Protective Services is responsible for the legal aspects of the case. These responsibilities are centered on the investigation, substantiation, and proof of allegations of abuse and neglect.

- Articulating the basis of the request for court jurisdiction accurately and with a high degree of specificity
- Deciding whether out of home placement is necessary
- Filing a complete and defensible petition
- Assuring all parties are notified of proceedings

Within this context, there are two primary responsibilities for protective services staff relative to absent parents in the early stages of a child protection proceeding.

- Insuring that the petition for court jurisdiction appropriately addresses the absent parent issue. This includes assuring that, if appropriate, the petition contains allegations about an absent parent, and that the petition is amended if allegations are discovered prior to adjudication.
- Transferring any information gathered about an absent parent to the assigned foster care staff.

### **Identifying and Finding An Absent Parent**

The four circumstances surrounding an absent parent issue in a child protection case follow.

- **Identity and whereabouts is not known,**
- **Identity is thought to be known, but parentage is being denied or is in question.**
- **Identity is known but efforts to locate have not been successful,**
- **Identity and whereabouts is known,**

For each of these circumstances, the activities for either identifying or finding an absent parent are described below.

#### ***Identity and Whereabouts is not Known***

Cases where neither the identity nor the whereabouts is known present obvious challenges. Depending upon the circumstances of the case, there are three sets of activities to consider. First, in all cases, steps should be taken to locate the absent parent. In some cases a determination of parentage must be made. Finally, notice must be provided if a parent is identified and located.

**Locating the Absent Parent:** In cases where a petition is being filed soon if not immediately after an investigation, locating an absent parent can be particularly difficult. Often the dynamics of the situation are such that the custodial parent is in less than a cooperative frame of mind, making inquiries as to the identity and whereabouts difficult.

- If time permits prior to filing the petition, reasonable efforts should be made to locate the absent parent. In jurisdictions where an absent parent protocol is implemented, the following questions will be asked (as appropriate) by the judge or hearing officer of the court to determine the efforts that have gone into locating the absent parent.
  - Has the parent involved in the protective proceeding been asked as to the identity and whereabouts of the absent parent?
  - Have friends and relatives been contacted?
  - Was the telephone directory checked?
  - Was the city directory checked? (if one exists)
  - If none of the above were successful, has a request for a search by the Office of Child Support Enforcement been made?
- **Inquiries By Others:** If protective services staff has been unable to identify the absent parent prior to filing the petition, then any relevant information should be provided to others as they become involved in the case.
  - If a foster care worker has been assigned, then the specific efforts that have been undertaken to locate the absent parent should be communicated including;

### **Checklist for Information Sharing and Communication**

#### **Petitions**

- Is there a local process for the exchange of information between foster and protective services to amend an original petition?
  - Is there a lead person at protective services for this purpose?
  - Does private agency staff work through a contract manager at the local FIA office or can they directly contact protective services?
- What role does the prosecutor's office (or other agency legal representation) play in assisting with amended petitions?

#### **Services**

- Does private agency staff know how to access services such as paternity testing and parent locating through the Office of Child Support?
- Has an appropriate protocol been established between the Office of Child Support Enforcement so that;
  - FIA and contract agency staff know who to contact to request a search
  - OCS staff knows who to notify of a successful search
  - FIA and contract agency staff notify OCS if a parent has been identified or located independent of the requested search
- Do all parties involved in search efforts have an agreed upon local protocol for communicating results back to the court?

- Any efforts that are pending at the time of the transfer
- Any efforts that may benefit from continued attention.
  - For instance, because PS is likely to have made the decision to remove a child from home, the relationship the parent may not be conducive to open sharing of information. A foster care worker may be able to begin in a more positive way, and revisiting the whereabouts may prove beneficial.
- The court may decide to place the parent who is present at Preliminary Hearing under oath and take testimony as to the identity and whereabouts of the absent parent. This approach might be used when it is believed that the parent who is present knows more as to identity and whereabouts than what has been provided. In these situations, protective services or foster care staff should be prepared to explain to the court why such testimony might be warranted.

### ***Identity is Known But Efforts to Locate Have Not Been Successful***

- If time permits prior to filing the petition, reasonable efforts should be made to locate the absent parent. In jurisdictions where an absent parent protocol is implemented, the following questions will be asked (as appropriate) by the judge or hearing officer of the court to determine the efforts that have gone into locating the absent parent.
  - Has the parent involved in the protective proceeding been asked as to the identity and whereabouts of the absent parent?
  - Have friends and relatives been contacted?
  - Was the telephone directory checked?
  - Was the city directory checked? (if one exists)
  - If none of the above were successful, has a request for a search by the Office of Child Support Enforcement been made?
- One of the issues to address once an absent parent is located is whether or not the absent parent could be a viable placement for a child. To facilitate that inquiry, the following issues should be investigated and documented.
  - Does the Absent Parent have a criminal history?
  - Does the Absent Parent have a Protective Services history?
  - Has the Absent Parent ever contributed to the financial support of the child(ren)?
  - Has the Absent Parent ever had custody of the child(ren)?
  - Have any of the Absent Parent's relatives ever been involved in caring for the child(ren)?
  - To what extent has the Absent Parent maintained contact with the child(ren) or otherwise shown interest?
  - Are there other factors that would indicate that the Absent Parent has a willingness and or ability to care for his children?
- When the identity of an absent parent is known, but whereabouts is unknown, attempts at notice should be handled in the following manner.
  - Personal service is the preferred method. However if diligent efforts to locate an absent parent have been unsuccessful, then alternative service should be done.
    - An Order for Alternative Service (JC 47) should be sought from the court by filing a Motion for Alternative Service (JC 46). (See Box)
  - For Jurisdictions using this Protocol, an *Affidavit of Diligent Search* (included with these materials) will be used. The form provides the caseworker the opportunity to affirmatively state that reasonable efforts have been made to locate an absent parent. In addition, it establishes a request for a search by the Office of Child Support Enforcement as a "reasonable efforts" standard when other activities prove unsuccessful. The Affidavit of Diligent Search is incorporated into a local protocol by requiring that it be an attachment to any Motion for Alternate Service. In all cases the Affidavit becomes part of the legal file. The reasonable efforts standards in the *Affidavit of Diligent Search* follow.
    - Has the parent involved in the protective proceeding been asked as to the identity and whereabouts of the absent parent?
    - Have friends and relatives been contacted?
    - Was the telephone directory checked?
    - Was the city directory checked? (if one exists)
    - If none of the above were successful, has a request for a search by the Office of Child Support Enforcement been made?
  - Once an Order for Alternate Service is obtained, the alternate service option most appropriate for the situation should be used.
    - If there is a reasonable belief that the place of residence is known, but for any of a variety of reasons

### ***Paternity Tests as A Free Service in Child Protection Cases***

CPS and Foster Care staffs now have access to paternity testing services. An Agreement has been established with Paternity Genetic Testing Services. All costs for these tests will be borne by FIA Central Office. To make arrangements workers the National Legal Laboratories directly, (517) 349-3890, ext. 118 or FAX at (517) 349-6879.

- The service is not for child support issues
- It is available one time per client
- Previous testing cannot be available through other sources such as the Office of Child Support or the Friend of the Court.

For more information, refer to FIA L-letter 99-084 (or subsequent L-letters on the topic)

contact has not been made, then delivering to a member of the household may be the preferred alternate service. (In this instance, the order states that it should be delivered, "to a member of the person's household who is of suitable age and discretion to receive process, with instructions to deliver it promptly to the person named in the summons.")

- If nothing is known as to residence then publication may be most appropriate.

### ***Identity is Thought to be Known, but Parentage is Being Denied or is in Question***

- A first step is to determine parentage when the identity of the absent parent is thought to be known but parentage is either being denied or is in question. Depending on the period of time between substantiation and filing of a petition, a determination may not be possible prior to filing the petition.
- Once a positive determination of parentage is made, then each of the following questions should be asked and addressed.
  - Based on what is known, should the parent be included as a respondent in the petition?
    - If a non-custodial legal parent fails to appear and there is no indication that the absent parent has sought custody, or intends to provide for proper care and custody of the child, then barring mitigating circumstances, the absent parent should be a respondent in the original petition. (MCL 712A.19b (3) (a) and (g).
    - Allegations could also include any statements made by the mother regarding prior abuse of the children or domestic violence, which may have affected the children.
  - Is the parent a possible viable placement for the child ?
    - Does the Absent Parent have a criminal history?
    - Does the Absent Parent have a Protective Services history?
    - Has the Absent Parent ever contributed to the financial support of the child(ren)
    - Has the Absent Parent ever had custody of the child(ren)?
    - Have any of the Absent Parent's relatives ever been involved in caring for the child(ren)?
    - To what extent has the Absent Parent maintained contact with the child(ren) or otherwise shown interest?
    - Are there other factors that would indicate that the Absent Parent has a willingness and or ability to care for his children?

### ***Identity and Whereabouts is Known***

When both the identity and whereabouts of an absent parent is known, there are two activities to undertake. Appropriate Legal Notice should be provided and, in addition to the strict legal requirements of notice, the absent parent should be informed about how child protective proceedings unfold, including the potential for being involved in the case services plan.

- **Notice:** When the whereabouts of the absent parent is known, the absent parent must be personally served with a Notice of Hearing (JC 45) and a copy of the Petition (JC 04). In addition, a parent who is a respondent to the proceedings should receive a copy of the summons to appear. (Form JC 21 Summons: Order To Appear (Child Protective Proceedings)) Related **Notes Follow:**

- Best practice efforts call for personal service when the whereabouts of the absent parent is known. However there may be circumstances when personal service is not possible. In those instances, a Motion for Alternate Service (JC 46) can be filed with the court and an Order for Alternate Service (JC 47) can be obtained.
- For Jurisdictions using this Protocol, an *Affidavit of Diligent Search* (included with these materials) will be used. The form provides the caseworker the opportunity to affirmatively state that reasonable efforts have been made to locate an absent parent. In addition, it establishes a request for a search by the Office of Child Support Enforcement as a "reasonable efforts" standard when other activities prove unsuccessful. The Affidavit of Diligent Search is incorporated into a local protocol by requiring that it be an attachment to any Motion for Alternate Service. In all cases the Affidavit becomes part of the legal file. The reasonable efforts standards in the *Affidavit of Diligent Search* follow.
  - Has the parent involved in the protective proceeding been asked as to the identity and whereabouts of the absent parent?
  - Have friends and relatives been contacted?
  - Was the telephone directory checked?
  - Was the city directory checked? (if one exists)
  - If none of the above were successful, has a request for a search by the Office of Child Support Enforcement been made?

#### **Informing Absent Parents of Protective**

**Proceedings:** A summons to appear at a child protective proceeding is clear with respect to the purpose of the proceeding, the rights a party has, and the consequences for failure to appear. However, in some cases, especially those where the absent parent could be a viable placement, consideration should be given to communicating the importance of being involved in the court proceedings and being connected to the case services plan. The manner in which such information is conveyed is an issue to be decided locally and would likely vary depending on the case.



## ***Beyond the Preliminary and Adjudicatory Phases - Ongoing Attention***

This protocol is designed to promote early, intensive and coordinated effort for finding and, if appropriate, involving an absent parent in a child protective proceeding. In most cases these efforts will resolve the issue early in the process. However, in some situations, any of a variety of concerns may linger beyond the adjudicatory phase of a child protection proceeding. Foster care staff should insure that, as needed, continued attention is given to the matter. In jurisdictions where this protocol has been implemented, issues relative to an absent parent will be addressed, as appropriate at each court proceeding. Therefore foster care staff should be prepared to report on efforts made to resolve absent parent issues

- **Identity and whereabouts is not known,**
  - What continued efforts have been undertaken to identify and locate the absent parent?
- **Identity is known but efforts to locate have not been successful,**
  - What continued efforts have been undertaken to locate the absent parent?
- **Identity is thought to be known, but parentage is being denied or is in question.**
  - Have appropriate steps been taken to determine parentage?
  - If parentage has been determined since the last court hearing, what has been done to engage the absent parent involved in the child's life or, to establish that the parent has no interest?
- **Identity and whereabouts is known,**
  - What has been done to engage the absent parent or to establish that the parent has no interest?

### **Absent Parents and Notice of Request to Terminate Parental Rights**

As emphasized throughout this protocol, it is important to identify and locate absent parents as early in the proceedings as possible. If appropriate, the petitioner should include allegations against the absent parent in the original petition so that the absent parent may be made a respondent to the proceedings. If for whatever reason this does not occur, the following steps are necessary:

- At least one statutory ground for termination of the absent parent's parental rights must be properly alleged and set forth in the amended or supplemental petition (e.g., abandonment, failure to provide proper care or custody).
- A noncustodial parent must be notified of the petition and the time of hearing. This is necessary even if the absent parent was properly noticed for the proceedings on the original petition. MCL 712A.12, *In re Brown*, 149 Mich App 529 (1986). A summons, with a copy of the amended or supplemental petition attached, should be issued and served on the absent parent according to the rules governing service in child protective proceedings. See MCL 712A.20, *In re Atkins*, 237 Mich App 250 (1999).
- The rules governing service in child protective proceedings include provisions for substituted service, including service by certified mail or publication, when personal service is impracticable or the parent's whereabouts are unknown. Before resorting to notice by publication, however, the court must determine whether reasonable efforts were made to locate the absent parent.

## Section IV: Resources

### ***The Office of Child Support***

The Office of Child Support (OCS) has access to a variety of resources that can be extremely helpful in efforts to locate an absent parent. Efforts are underway at the state level to improve the coordination of effort between protective services and the Office of Child Support. As a result, OCS is willing to work with Protective Services staff to assist in locating absent parents. If an appropriate request is made, OCS will undertake a search and provide a prompt response.

A threshold requirement for assistance from the Office of Child Support is that the child must be either IV-A eligible, or a request for IV-D services must be made. This requirement can be met in the following two different ways.

- **Public Assistance Eligibility:** Any child who is eligible for FIP and or Medicaid is IV-D eligible as well, and services can be requested from the Office of Child Support. Also OCS can undertake a search for a child who has received FIP or MA in the past even when assistance is not being provided at the time of the request.
- **Request for IV-D Services:** If a child has never been eligible for IV-D Services, the OCS is still able to assist if a request for IV-D services is made. Points to consider when making such a request follow.
  - The request for services should be made on FIA Form 1201 - Non-FIP Child support Services Application (However, the 1201 is not necessary if the child is currently receiving FIP or MA, or has received such assistance in the past.)
  - The request must be made and signed by the custodian of the child. Depending on the circumstances, any of the following may request IV-D services from OCS.
    - Parent
    - Appropriate Court Staff (if the child is a temporary court ward)
    - FIA Private Agency Staff (if the child is either a temporary court ward or a state ward, AND the court order states that the child has been placed in the "care and custody of the agency.")
    - Foster Parents (again if the child has been placed in their "care and custody")
- Office of Child Support (OCS) Staff is assigned to every FIA office in Michigan.
- OCS staffs have access to each of the following data bases and data collection systems.
  - Child Support Enforcement System
  - Central Paternity Register
  - Unemployment Compensation Records
  - Federal Parent Locator System
  - Secretary of State
  - Data Warehouse
  - Internet
- OCS staff are highly trained and experienced in accessing these information systems and can organize a search based on what is known about an absent parent.

If the investigative efforts undertaken by Protective Services or Foster Care are not successful, a recommended next step is to request a search by OCS. Any of the following information that is known should be made available when requesting a search. Care should be taken to ensure that information (dates, spellings, etc.) is accurate.

- Social Security Number
- Drivers License Number
- Last known address
- Prior of subsequent marriages/children
- Spelling of Party's names
- Date of Birth
- Last place of employment
- Home town
- Miscellaneous Family information
  - Mother's maiden name
  - Other last names based on marriages and divorces

## **Definitions**

**“Parent”** means a person who has the legal right of physical custody and the responsibility for the control, care, and maintenance of a child. “Parent” includes the biological mother and father of a child, a guardian of the child, and a custodian of a child, other than a court-ordered custodian.

**“Respondent – Child Protective Proceeding”** means the parent who is alleged to have committed an offense against a child

**“Respondent – Termination Proceeding”** means a natural or adoptive mother and/or a father whose paternity has been established by law.

**“Non-custodial parent”** means a biological parent of a child who does not have a legal right to physical custody of a child but whose parental rights to the child have not been terminated.

**“Father”** means a man:

- 1) who is married to the mother of the child at any time from conception to birth unless a court determines that the man is not the biological parent of the child;
- 2) who legally adopts the child;
- 3) who is named on a Michigan birth certificate as the father of the child; or
- 4) whose paternity has been established by law.

**“Putative father”** means an identified man who is believed to be the biological father of a child born to a woman who was unmarried from conception to birth of the child, or the father of a child who a court has determined is not the issue of a marriage.

STATE OF MICHIGAN COUNTY OF KENT JUDICIAL CIRCUIT-FAMILY DIVISION	AFFIDAVIT OF DILIGENT SEARCH	FILE NO: (file no.)
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**PUTATIVE FATHER PROCEDURES  
CONSOLIDATED WITH PRETRIAL  
TRIAL**

1. In the matter of: (name)
2. I, (caseworker's name), as caseworker, do hereby acknowledge that I have made a diligent search and inquiry in an effort to locate and find (name), (father or mother), of the above minor(s) and was unable to locate and am prepared to testify to such in Court.
3. The means used in an attempt to locate the person were:

☐ Interviewed the parent as to the identity and/or whereabouts of the absent parent

☐ Contacted friends and relatives:

Specify: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☐ Checked the telephone directory

☐ Checked the city directory (if one exists)

☐ Submitted a request to the Office of Child Support Enforcement (OCSE) for a search.

*The Status of the OCSE search is;*

☐ Pending – Alternate Service is being requested to assure timely notice.

☐ An initial search has been completed with no success

☐ Other Efforts (Specify): \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Caseworker's Signature

PRETRIAL DATE: (date and time)

TRIAL DATE: (date and time)

PLEASE RETURN TO \_\_\_\_\_ BEFORE PRETRIAL/TRIAL DATE